

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2529

Introduced by Assembly Members Wieckowski and Beall

February 24, 2012

An act to amend ~~Sections 116760.43, 116760.50, 116761.20, 116761.21, 116761.23, 116761.50, 116761.65, and 116761.70 of the Health and Safety Code, relating to safe drinking water~~ *Section 748.5 of the Public Utilities Code, relating to greenhouse gases.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2529, as amended, Wieckowski. ~~Safe Drinking Water State Revolving Fund. California Global Warming Solutions Act of 2006: electrical corporations.~~

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. The act authorizes

the state board to include use of market-based compliance mechanisms. Existing law requires all moneys, except for fines and penalties, collected by the state board from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation by the Legislature.

Under the Public Utilities Act, the Public Utilities Commission has regulatory jurisdiction over public utilities, including electrical corporations. A violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

This bill would require the commission to credit directly, in proportion to the increase in electricity cost, to all retail delivery customers of an electrical corporation all revenues, as specified, the electrical corporation receives as a direct result of the direct allocation of greenhouse gas allowances in proportion to the increase in electricity costs those customers incur as a result of the state board adopting a market-based compliance mechanism. Because a violation of this requirement is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health. The department's duties include, but are not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting and enforcing regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.~~

~~Existing law establishes the Safe Drinking Water State Revolving Fund, which is continuously appropriated to the department for the provision of grants and revolving fund loans to provide for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law authorizes~~

~~the department to establish specified separate accounts or subaccounts within the fund.~~

~~Existing law requires applicants for loans or grants to provide specified information to the department. Existing law authorizes the department to enter into contracts with applicants for grants or loans, and requires and authorizes these contracts to contain specified information.~~

~~This bill would require an applicant for funding to demonstrate that it has the technical, managerial, and financial capacity to operate and maintain its water system for at least 20 years, as specified. The bill would authorize an applicant, subject to specified conditions, to receive up to 80% of the full cost of a construction project in the form of a loan. The bill would require that contracts entered into between the department and an applicant include certain additional information, and authorize the contracts to include certain additional information.~~

~~This bill would make other related changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 748.5 of the Public Utilities Code is
2 amended to read:
3 748.5. (a) ~~Except as provided in subdivision (c), the~~ The
4 commission shall require *all* revenues, including any accrued
5 interest, received by an electrical corporation as a result of the
6 direct allocation of greenhouse gas allowances to electric utilities
7 pursuant to subdivision (b) of Section 95890 of Title 17 of the
8 California Code of Regulations to be credited directly to ~~the~~
9 ~~residential, small business, and emissions-intensive trade-exposed~~
10 *all retail delivery* customers of the electrical corporation *in*
11 *proportion to the increase in electricity costs those customers incur*
12 *as a result of a market-based compliance mechanism adopted by*
13 *the State Air Resources Board pursuant to Part 5 (commencing*
14 *with Section 38570) of Division 25.5 of the Health and Safety*
15 *Code.*
16 (b) Not later than January 1, 2013, the commission shall require
17 the adoption and implementation of a customer outreach plan for
18 each electrical corporation, including, but not limited to, such
19 measures as notices in bills and through media outlets, for purposes

1 of obtaining the maximum feasible public awareness of the
2 crediting of greenhouse gas allowance revenues. Costs associated
3 with the implementation of this plan are subject to recovery in
4 rates pursuant to Section 454.

5 (c) The commission may allocate up to 15 percent of the
6 revenues, including any accrued interest, received by an electrical
7 corporation as a result of the direct allocation of greenhouse gas
8 allowances to electrical distribution utilities pursuant to subdivision
9 (b) of Section 95890 of Title 17 of the California Code of
10 Regulations, for clean energy and energy efficiency projects
11 established pursuant to statute that are administered by the
12 electrical corporation and that are not otherwise funded by another
13 funding source.

14 *SEC. 2. No reimbursement is required by this act pursuant to*
15 *Section 6 of Article XIII B of the California Constitution because*
16 *the only costs that may be incurred by a local agency or school*
17 *district will be incurred because this act creates a new crime or*
18 *infraction, eliminates a crime or infraction, or changes the penalty*
19 *for a crime or infraction, within the meaning of Section 17556 of*
20 *the Government Code, or changes the definition of a crime within*
21 *the meaning of Section 6 of Article XIII B of the California*
22 *Constitution.*

23 ~~SECTION 1. Section 116760.43 of the Health and Safety Code~~
24 ~~is amended to read:~~

25 ~~116760.43. (a) The department may adopt emergency~~
26 ~~regulations pursuant to Chapter 3.5 (commencing with Section~~
27 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code~~
28 ~~necessary or convenient to implement this chapter and to meet~~
29 ~~requirements pursuant to the federal act.~~

30 ~~(b) The adoption of any emergency regulations that are filed~~
31 ~~with the Office of Administrative Law within 18 months of the~~
32 ~~effective date of this act shall be deemed to be an emergency and~~
33 ~~necessary for the immediate preservation of the public peace, health~~
34 ~~and safety, or general welfare.~~

35 ~~(c) Applicable regulations in effect at the time a complete~~
36 ~~application for funding a planning and preliminary design project~~
37 ~~pursuant to this chapter is received by the department shall apply~~
38 ~~to the planning and preliminary design project or construction~~
39 ~~project funding, unless the department determines a regulation~~
40 ~~adopted later, but prior to the date a funding agreement is issued~~

1 for a planning and a preliminary design project or a construction
2 project, would be more beneficial to the project applicant, in which
3 case the later adopted regulation may be applied.

4 SEC. 2. Section 116760.50 of the Health and Safety Code is
5 amended to read:

6 116760.50. The department shall establish criteria that shall
7 be met for projects to be eligible for consideration for funding
8 under this chapter. The criteria shall include all of the following:

9 (a) All preliminary design work for a defined project that will
10 enable the applicant to supply water that meets safe drinking water
11 standards, including a cost estimate for the project, shall be
12 completed.

13 (b) A legal entity shall exist that has the authority to enter into
14 contracts and incur debt on behalf of the community to be served
15 and owns the public water system or has the right to operate the
16 public water system under a lease with a term of at least 20 years,
17 unless otherwise authorized by the department. If the proposed
18 project is funded by a loan under this chapter, the department may
19 require the applicant to secure a lease for the full term of the loan
20 if the loan exceeds 20 years.

21 (c) The applicant shall hold all necessary water rights.

22 (d) The applicant shall have completed, prior to receiving a
23 funding agreement, environmental review and documentation of
24 the defined project, including, but not limited to, any review
25 required pursuant to the California Environmental Quality Act
26 (Division 13 (commencing with Section 21000) of the Public
27 Resources Code) and the guidelines adopted pursuant thereto. Any
28 measures required for compliance with applicable environmental
29 laws and regulations shall be included in the final plans for the
30 defined project.

31 (e) The applicant has assembled sufficient financial data to
32 establish its ability to complete the proposed project and to
33 establish the amount of debt financing it can undertake.

34 (f) The applicant shall demonstrate that it has the technical,
35 managerial, and financial capacity to operate and maintain its water
36 system, including the construction project, in accordance with
37 Section 300j-12(a)(3) of the federal act, state law, and applicable
38 regulations for at least 20 years, or shall submit an acceptable plan
39 for achieving this capacity by the time the project is scheduled to
40 be completed.

1 ~~SEC. 3. Section 116761.20 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~116761.20. (a) Planning and preliminary engineering studies,~~
4 ~~project design, and construction costs incurred by community and~~
5 ~~not-for-profit noncommunity public water systems may be funded~~
6 ~~under this chapter by loans, and, if these systems are owned by~~
7 ~~public agencies or private not-for-profit water companies, by~~
8 ~~grants, or a combination of grants and loans.~~

9 ~~(b) (1) The department shall determine what portion of the full~~
10 ~~costs the public agency or private not-for-profit water company is~~
11 ~~capable of repaying and authorize funding in the form of a loan~~
12 ~~for that amount. The department shall authorize a grant only to the~~
13 ~~extent the department finds the public agency or not-for-profit~~
14 ~~water company is unable to repay the full costs of a loan.~~

15 ~~(2) Notwithstanding any other provision of this chapter, a small~~
16 ~~community water system or nontransient noncommunity water~~
17 ~~system that is owned by a public agency or a private not-for-profit~~
18 ~~water company and serving a severely disadvantaged community,~~
19 ~~is deemed to have no ability to repay a loan.~~

20 ~~(c) At the request of the department, the Public Utilities~~
21 ~~Commission shall submit comments concerning the ability of~~
22 ~~suppliers, subject to its jurisdiction, to finance the project from~~
23 ~~other sources and to repay the loan.~~

24 ~~SEC. 4. Section 116761.21 of the Health and Safety Code is~~
25 ~~amended to read:~~

26 ~~116761.21. Not more than 30 percent and not less than 15~~
27 ~~percent, provided that there are projects eligible for funding as~~
28 ~~prescribed in Section 116760.70, of the total amount of the~~
29 ~~capitalization grant may be expended for grants. This amount shall~~
30 ~~be limited to disadvantaged communities specified in Section~~
31 ~~1452(d) of the federal act (42 U.S.C. Sec. 300j-12).~~

32 ~~SEC. 5. Section 116761.23 of the Health and Safety Code is~~
33 ~~amended to read:~~

34 ~~116761.23. (a) The maximum amount of a planning grant~~
35 ~~permitted under this chapter for each participating public water~~
36 ~~system's share of the costs of the planning, engineering studies,~~
37 ~~environmental documentation, and design of a single project shall~~
38 ~~be no more than five hundred thousand dollars (\$500,000).~~

39 ~~(b) Unless the department approves an increase pursuant to this~~
40 ~~subdivision, the maximum amount of a construction grant award~~

1 authorized under this chapter to each participating public water
2 system for its share of the cost of the construction of a single
3 project shall be no more than three million dollars (\$3,000,000).
4 The department may approve an increase in the maximum amount
5 for a construction grant award authorized under this chapter so
6 that the maximum amount of the construction grant award does
7 not exceed ten million dollars (\$10,000,000) only if the department
8 makes all of the following findings:

9 (1) A public water system that serves a disadvantaged
10 community has a defined project need that exceeds the maximum
11 grant amount of three million dollars (\$3,000,000).

12 (2) The defined project has been bypassed in at least one funding
13 cycle due to a lack of funds.

14 (3) The defined project is eligible for funding pursuant to the
15 program regulations.

16 (4) The defined project represents the highest public health risk
17 among unfunded projects, as determined by the department
18 according to its standard criteria.

19 (e) Total funding under this article for planning, engineering
20 studies, environmental documentation, project design, and
21 construction costs of a single project, whether in the form of a loan
22 or a grant, or both, shall be determined by an assessment of
23 affordability using criteria established by the department.

24 (d) Subject to all other limitations of this chapter, a small
25 community water system or nontransient noncommunity water
26 system, owned by a public agency or private not-for-profit water
27 company, serving severely disadvantaged communities shall be
28 eligible to receive up to 100 percent of eligible project costs in the
29 form of a grant, to the extent the system cannot afford a loan as
30 determined by the department pursuant to Section 116761.20.

31 (e) Subject to the availability of funds and the applicant's ability
32 to repay, an applicant may receive up to 80 percent of the full cost
33 of the construction project in the form of a loan bearing interest
34 at the rate established pursuant to subdivision (a) of Section
35 116761.65.

36 SEC. 6. Section 116761.50 of the Health and Safety Code is
37 amended to read:

38 116761.50. (a) The department may enter into contracts with
39 applicants for grants or loans for the purposes set forth in this
40 chapter. Any contract entered into pursuant to this section shall

1 include only terms and conditions consistent with this chapter and
2 the regulations established under this chapter.

3 (b) ~~The contract shall include all of the following terms and~~
4 ~~conditions that are applicable:~~

5 (1) ~~An estimate of the reasonable cost of the project or study.~~

6 (2) ~~An agreement by the department to loan or grant, or loan~~
7 ~~and grant, the applicant an amount that equals the portion of the~~
8 ~~costs found by the department to be eligible for a state loan or~~
9 ~~grant. The agreement may provide for disbursement of funds during~~
10 ~~the progress of the study or construction, or following completion~~
11 ~~of the study or construction, as agreed by the parties.~~

12 (3) ~~An agreement by the applicant to proceed expeditiously with~~
13 ~~the project or study.~~

14 (4) ~~An agreement by the applicant to commence operations of~~
15 ~~the project upon completion of the project, and to properly operate~~
16 ~~and maintain the project in accordance with the applicable~~
17 ~~provisions of law.~~

18 (5) ~~In the case of a loan, an agreement by the applicant to repay~~
19 ~~the state, over a period not to exceed the useful life of the project~~
20 ~~or 20 years, whichever is shorter, except as provided in the federal~~
21 ~~act, or in the case of a study, over a period not to exceed five years;~~
22 ~~that includes all of the following:~~

23 (A) ~~The amount of the loan.~~

24 (B) ~~The administrative fee specified in subdivision (a) of Section~~
25 ~~116761.70.~~

26 (C) ~~Interest on the principal, which is the amount of the loan~~
27 ~~including, if applicable, an administrative fee.~~

28 (6) ~~In the case of a grant, an agreement by the public agency or~~
29 ~~private not-for-profit water company to operate and maintain the~~
30 ~~water system for a period of 20 years, unless otherwise authorized~~
31 ~~by the department.~~

32 (7) (A) ~~The time for the completion of the planning and~~
33 ~~preliminary design project. Subject to any requirements of the~~
34 ~~federal act and its implementing regulations and guidelines, in the~~
35 ~~case of a project for planning and a preliminary design, pursuant~~
36 ~~to Section 116760.80, and except as specified in subparagraph (B);~~
37 ~~the funding recipient shall complete the project within 18 months~~
38 ~~from the date of the execution of the funding agreement.~~

1 ~~(B) If the funding recipient cannot complete the project within~~
2 ~~18 months, the department may grant an extension of up to 18~~
3 ~~months upon request of the funding recipient.~~

4 ~~(c) The contract may include any of the following terms and~~
5 ~~conditions:~~

6 ~~(1) An agreement by the funding recipient to adopt a fee~~
7 ~~structure that provides for the proper maintenance and operations~~
8 ~~of the project and includes a sinking fund for repair and~~
9 ~~replacement of the facilities in cases where appropriate. The fee~~
10 ~~structure shall also provide an acceptable dedicated source of~~
11 ~~revenue for the repayment of the amount of the loan, and the~~
12 ~~payment of administrative fees and interest.~~

13 ~~(2) If the entire project is not funded pursuant to this chapter,~~
14 ~~the department may include a provision requiring the applicant to~~
15 ~~share the cost of the project or obtain funding from other sources.~~

16 ~~(3) An agreement by the funding recipient to complete, as part~~
17 ~~of the planning and preliminary design project or construction~~
18 ~~project, a rate study pursuant to guidelines established by the~~
19 ~~department.~~

20 ~~(4) An agreement by the funding recipient to implement, not~~
21 ~~later than the conclusion of the construction project, the approved~~
22 ~~plan for achieving technical, managerial, and financial capacity~~
23 ~~as specified in subdivision (f) of Section 116760.50.~~

24 ~~(5) If the funding recipient is a small community water system~~
25 ~~or nontransient noncommunity water system, owned by a public~~
26 ~~agency or private not-for-profit water company receiving grant~~
27 ~~funding, an agreement by the funding recipient to review and~~
28 ~~consider guidelines adopted by the department for any procurement~~
29 ~~of engineering, environmental compliance, or architectural services.~~

30 ~~(d) The department may require applicants to provide security~~
31 ~~for loan contracts.~~

32 ~~SEC. 7. Section 116761.65 of the Health and Safety Code is~~
33 ~~amended to read:~~

34 ~~116761.65. (a) The department shall annually establish the~~
35 ~~interest rate for loans made pursuant to this chapter at 50 percent~~
36 ~~of the average interest rate, computed by the true interest cost~~
37 ~~method, paid by the state on general obligation bonds issued in~~
38 ~~the prior calendar year. All loans made pursuant to this chapter~~
39 ~~shall carry the interest rate established for the calendar year in~~
40 ~~which the funds are committed to the loan, as of the date of the~~

1 issuance of the funding commitment. The interest rate set for each
2 loan shall be applied throughout the repayment period of the loan.
3 Interest on the loan shall not be deferred.

4 (b) Notwithstanding subdivision (a), if the loan applicant is a
5 public water system that is a disadvantaged community or provides
6 matching funds, the interest rate on the loan shall be 0 percent.

7 SEC. 8. ~~Section 116761.70 of the Health and Safety Code is~~
8 ~~amended to read:~~

9 ~~116761.70. (a) Not more than 4 percent of the capitalization~~
10 ~~grant may be used by the department for administering this chapter.~~
11 ~~The department may establish a reasonable schedule of~~
12 ~~administrative fees for loans, which shall be paid by the funding~~
13 ~~recipient to reimburse the state for the costs of the state~~
14 ~~administration of this chapter.~~

15 ~~(b) Charges incurred by the Attorney General in protection of~~
16 ~~the state's interest in the use of repayment of grant and loan funds~~
17 ~~under this chapter shall be paid. These charges shall not be paid~~
18 ~~from funds allocated for administrative purposes, but shall be~~
19 ~~treated as a program expense not to exceed one-half of 1 percent~~
20 ~~of the total amount deposited in the fund.~~